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Venable CFPB Update: (Another) RESPA Enforcement and How to Self-Report

A Connecticut mortgage lender has agreed to pay an \$83,000 civil money penalty for violating the Real Estate Settlement Procedures Act (RESPA). The lender focuses its business primarily on loss mitigation financing to distressed borrowers.

Until 2010, a hedge fund financed the lender's activities, and, accordingly, the lender and hedge fund split the origination fees paid by consumers. In 2011, the lender ended the funding arrangement but continued to split fees with the hedge fund for loans originated between August 2011 and April 2012 (a total of 83 loans).

In 2013, the lender self-reported to the Bureau what it believed to be a violation of RESPA for the payment of unearned fees. The lender fully cooperated with the Bureau, which ultimately found that a violation of RESPA had occurred and the lender settled the violation for \$83,000 (\$1,000 per violation).

Self Reporting

This settlement is not inherently remarkable; however, the circumstances surrounding the settlement are. The CFPB took this opportunity to remind the industry of guidance ([Bulletin No. 2013-06](#)) issued in June 2013 related to self-reporting.

Bulletin 2013-06 advises the following:

- **Enforcement Factors.** The Bureau considers a number of factors when determining whether to exercise its enforcement discretion including: (i) the nature, extent, and severity of the violations identified; (ii) the actual or potential harm from these violations; (iii) whether there is a history of past violations; and (iv) a party's effectiveness in addressing violations.
- **Responsible Conduct.** An entity that proactively self-polices, promptly self-reports to the Bureau, and self-reports to the Bureau when it identifies potential violations engages in "responsible conduct," which may favorably impact the ultimate resolution of a Bureau enforcement investigation.
- **Bureau Resolution.** For entities that engage in responsible conduct, the Bureau may resolve an investigation in several different ways including: (i) no public enforcement; (ii) treatment as a less severe type of violation; (iii) reducing the number of violations pursued; or (iv) reducing the sanctions or penalties sought.
- **Egregious Violations.** In those circumstances when the misconduct is egregious and the harm is great, the Bureau will not consider mitigation of penalties under this Bulletin.

For those entities that may want to avail themselves of this guidance, "responsible conduct" is composed of the following four factors:

- **Self-Policing.** To engage in self-policing as contemplated by this guidance, an entity must demonstrate a proactive commitment to use resources for the prevention and early detection of potential violations of consumer financial protection laws.
- **Self-Reporting.** Self-reporting of violations substantially advances the Bureau's protection of consumers and enhances its enforcement mission by reducing the resources it must expend to identify potential or actual violations that are significant enough to warrant an enforcement investigation. Prompt self-reporting also represents concrete evidence of a party's commitment to responsibly address the issue. As such, the Bureau highly recommends that entities self-report.
- **Remediation.** The Bureau's remedial priorities include obtaining full redress for those consumers injured by the violations and effectuating changes in the entity's future conduct.
- **Cooperation.** The Bureau believes that to cooperate with the Bureau for purposes of this guidance, the party must take substantial and material steps above and beyond what the law requires in its

interactions with the Bureau.

The Bureau believes that this guidance will encourage parties to engage in more self-policing and self-reporting. If you have any questions about this guidance, please contact a member of Venable's **CFPB Taskforce**.